310 CMR 50.00: TOXICS USE REDUCTION

Section

50.01: Authority

The Department of Environmental Protection adopts 310 CMR 50.00 pursuant to M.G.L. c. 21I, §§ 3, 10, 11 and 12.

50.02: Purpose

(1) The Department of Environmental Protection promulgates 310 CMR 50.00 to carry out its authority and responsibility:

(a) to promote toxics use reduction as the preferred means for preventing risks associated with the production and use of toxic substances, including risks to workers, consumers, the public and the environment;

(b) to promote toxics use reduction as the preferred means for achieving compliance with any state or federal law or regulation pertaining to toxics production and use, hazardous waste, industrial hygiene, worker safety, public exposure to toxics, or releases of toxics into the environment;

(c) to promote the coordination and enforcement of federal and state laws and regulations pertaining to chemical production and use, hazardous waste, industrial hygiene, worker safety, public exposure to toxics and the release of toxics into the environment;

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(d) to coordinate state programs in order to promote most effectively toxics use reduction in the commonwealth;
(e) to minimize unnecessary duplication of reporting requirements concerning chemical or hazardous substance production, use, release, disposal, and worker exposure;
(f) to provide up-to-date and consistent information about manufacturing, worker exposure, distribution, process, sale, storage, release or other use of chemicals on a facility, regional and statewide basis;
(g) to protect the public health, safety and welfare;
(h) to provide for the proper administration of and to otherwise effectuate the purposes of M.G.L. c. 21I.

50.03: Severability

It is hereby declared that the provisions of 310 CMR 50.00 are severable, and if any provisions hereof or the application thereof to any person or any circumstance is held invalid, such invalidity shall not affect other provisions hereof or applications thereof which can be given effect without the invalid provision or application.

50.04: Effective Date

310 CMR 50.00 shall take effect upon publication by the Secretary of the Commonwealth in the Massachusetts Register.

50.05: Noncompliance with 310 CMR 50.00

Any noncompliance with, failure to comply with, or violation of any provision of 310 CMR 50.00 shall constitute a violation of 310 CMR 50.00 for which the Department may take an enforcement action pursuant to M.G.L. c. 21A, § 16 and 310 CMR 50.00.

50.06: Computation of Time

Unless otherwise specifically provided by law, 310 CMR 50.00, or any determination issued pursuant to 310 CMR 50.00, any time period prescribed or referred to in 310 CMR 50.00 or in any determination issued pursuant to 310 CMR 50.00 shall begin with the first day following the act which initiates the running of the time period, and shall include every calendar day, including the last day of the time period so computed. If the last day is Saturday, Sunday, legal holiday, or any other day in which the offices of the Department are closed, the deadline shall run until the end of the next business day. If the time period prescribed or referred to is less than seven days, only days when the offices of the Department are open shall be included in the computation.

50.10: Definitions

As used in 310 CMR 50.000, the following terms shall have the following meanings, unless the context otherwise clearly requires.

Agency means state agency.

Appellant means an individual or organization who requests an adjudicatory hearing pursuant to M.G.L.c. 21I and 310 CMR 50.00.

Applicant means an individual who submits an application for certification as a toxics use reduction planner in accordance with 310 CMR 50.50.

Article means a manufactured item, other than an item which is manufactured at the facility:
(a) which is formed to a specific shape or design during manufacture;
(b) which has end use functions dependent in whole or in part upon its shape or design during end use; and

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(c) which does not release a toxic substance under normal conditions of processing or use of that item at the facility or establishments.

Byproduct means all nonproduct outputs of toxic or hazardous substances generated by a production unit, prior to handling, transfer, treatment or release.

CERCLA means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq*. (Public Law 92-500).

Commissioner means the Commissioner of the Department of Environmental Protection (pursuant to St. 1989, c. 240, § 101,"... the Department of Environmental Quality Engineering shall be known as the Department of Environmental Protection") or his designee.

Council means the administrative council on toxics use reduction as established by M.G.L. c. 21I, § 4.

Covered toxic means:

(a) a toxic substance that is manufactured, processed, or otherwise used at a facility in amounts, determined in accordance with 310 CMR 50.20 equal to or greater than the applicable threshold amount; and

(b) If a facility manufactures, processes, or otherwise uses a toxic sub- stance in amounts, determined in accordance with 310 CMR 50.20, equal to or greater than the applicable threshold amount, then a "covered toxic" also means a toxic substance that is manufactured or processed at the facility in amounts, determined in accordance with 310 CMR 50.20, equal to or greater than 10,000 pounds per calendar year, if the applicable threshold amount for that toxic substance is greater than 10,000 pounds per calendar year.

(c) A "covered toxic" also means a toxic substance manufactured, processed, or otherwise used by a toxic user within a priority user segment designated pursuant to M.G.L. c. 21I, § 14 for which the Department requires reporting or planning pursuant to M.G.L. c. 21I, §§ 14 and 10 or 11.

Customs territory of the United States means the 50 States, the District of Columbia, and Puerto Rico.

Department means the Department of Environmental Protection (pursuant to St. 1989, c. 240, § 101,"... the Department of Environmental Quality Engineering shall be known as the Department of Environmental Protection").

Emission means a release of a toxic or hazardous substance to the environment or a transfer of a toxic or hazardous substance in waste to an off-site location.

EPCRA means the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 *et seq*. (Public Law 99-499).

Establishment means an economic unit, generally at a single physical location, where business is conducted or where services or industrial operations are performed.

Facility means all buildings, equipment, structures, and other stationary items which are located on single site or on contiguous or adjacent sites and which are owned or operated by the same person, or by any person who controls, is controlled by, or is under common control with, such person. A facility may consist of more than one establishment if the establishments are operated by persons who have a common corporate or business interest (including, without limitation, common ownership or control) in the establishments. If the facility consists of more than one establishment where the establishments are operated by persons who do not have a common corporate or business interest (including, without limitation, common ownership or control) in the establishments, then each such person shall

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treat the establishments it operates as a facility. For purposes of this definition, a "common corporate or business interest" includes ownership, partnership, joint ventures, ownership of a controlling interest in one person by the other, or ownership of a controlling interest in both persons by a third person.

Form R means the report required by Section 313 of EPCRA and 40 CFR part 372.

Form S means the form required by M.G.L. c. 21I and 310 CMR 50.30, and set forth in 310 CMR 50.34.

Full-time individual employed or full-time equivalent mean each 2,000 hours worked per year by an employee or combination of employees.

Full-time employee means each 2,000 hours worked per year by an employee or combination of employees.

Full-time work experience means experience during full-time employment which extends over an uninterrupted period of three months or more with a minimum of 37.5 hours per week.

Import means to cause a toxic substance (including a mixture containing a toxic substance) to be imported into the customs territory of the United States. For purposes of this definition, "to cause" means to intend that the toxic substance be imported and to control the identity of the imported toxic substance and the amount to be imported. For purposes of this definition, "to cause" includes, without limitation, (i) situations where a person orders a toxic substance from a foreign supplier, and (ii) situations where the person uses an import brokerage firm as an agent to obtain the toxic substance.

Intermediate product means

(a) in chemical manufacturing, any chemical substance that is consumed, in whole or in part, in chemical reactions used for the intentional manufacture of another chemical substance or mixture, or that is intentionally present for the purpose of altering the rate of chemical reactions, other than a non-isolated intermediate as defined in M.G.L. c. 21I;

(b) in any other setting, any manufactured substance, compound, or product that is consumed, in whole or in part, in a chemical or physical process for the intentional manufacture of another product, or that is intentionally present for the purpose of aiding the manufacture of another product, other than a non-isolated intermediate as defined in M.G.L. c. 21I and 310 CMR 50.00.

Large quantity toxic user means any toxics user who manufactures, processes or otherwise uses any toxic or hazardous substance in an amount, determined in accordance with 310 CMR 50.20, the same as or greater than the applicable threshold amount in a calendar year at a facility. When more than one threshold applies to a facility's manufacturing, processing, or other use of a toxic substance, the toxics user is a large quantity toxics user if the facility exceeds any applicable threshold.

Manufacture means to produce, prepare, import or compound a toxic or hazardous substance.

Mixture means any combination of two or more chemicals, if the combination is not, in whole or in part, the result of a chemical reaction. However, if the combination was produced by a chemical reaction but could have been produced without a chemical reaction, it is also treated as a mixture. A mixture also includes any combination which consists of a chemical and associated impurities.

Multi-media means having to do with all environmental media including, but not limited to, water, land and air and workplaces within facilities.

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Non-isolated intermediate means any intermediate which is not intentionally removed from the equipment in which it is manufactured, including any reaction vessel in which it is manufactured, equipment which is ancillary to the reaction vessel or similar equipment, and any equipment through which the intermediate passes during a continuous flow process, but not including tanks or other vessels or equipment in which the substance or product is stored after manufacture.

Otherwise use or other use means any use of a toxic substance that is not covered by the terms "manufacture" or "process" and includes use of a toxic substance contained in a mixture or trade name product. Relabeling or redistributing a container of a toxic substance where no repackaging of the toxic substance occurs does not constitute use or processing of the toxic substance.

Person means any individual, trust, firm, joint stock company, corporation, partnership, or association engaged in business or in providing service, excluding the Commonwealth of Massachusetts, and any authority, district, municipality or political subdivision of the Commonwealth of Massachusetts.

Plan summary or Summary means the plan summary that a toxics user is required to submit to the Department pursuant to M.G.L. c. 21I, § 11(F) and 310 CMR 50.40.

Plan update or Update means an updated toxics use reduction plan pursuant to M.G.L. c. 21I, § 11(D) and 310 CMR 50.40.

POTW, (publicly-owned treatment works) operators means holders of discharge permits for any devices and systems owned by the Commonwealth or any of its political subdivisions and used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature to implement 33 U.S.C. § 1281, or necessary to recycle or reuse water at the most economical cost under the estimated life of works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and the appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; any works, including the land that will be an integral part of the treatment process (including the land used for the storage of treated wastewater in land treatment systems prior to land application) or is used for ultimate disposal of residues resulting from such treatment; any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing or municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems.

Process means the preparation of a toxic or hazardous substance, including, without limitation, a toxic substance contained in a mixture or trade name product, after its manufacture, for distribution in commerce:

(a) in the same form or physical state, or in a different form or physical state from, that in which it was received by the toxics user so preparing such substance; or

(b) as part of an article containing the toxic or hazardous substance.

Product means a product, a family of products, an intermediate product, a family of intermediate products, or a desired result or a family of result. "Product" also means a byproduct that is used as a raw material without treatment. If a byproduct is treated before it is used as a raw material, then it is not a product.

Production unit means a process, line, method, activity, or technique, or a combination or series thereof, used to produce a product.

Senior management official means an official who has management responsibility for the person or persons completing the report, and who has authority to act as agent for the toxics user.

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SIC code or standard industrial classification code means a specific identification code, within the identification code system developed by the United States Chamber of Commerce, assigned to a facility.

Small quantity toxics user means any toxics user who is not a large quantity toxics user.

State agency means any agency or authority of the Commonwealth as defined in M.G.L. c. 30A, § 1.

Thresholds amounts or threshold amount mean the following:

(a) for those toxics users that manufacture or process toxic or hazardous substance, as the terms "manufacture" and "process" are defined herein, the threshold amount for a toxic or hazardous substance shall be 25,000 pounds each year at any one facility; and

(b) for those toxics users that otherwise use a toxic or hazardous substance, the threshold amount for a toxic or hazardous substance shall be 10,000 pounds each year at any one facility; and

(c) if the administrator of the United States Environmental Protection Agency sets a threshold quantity for facility reporting on a toxic or hazardous substance under Section 313 of EPCRA which is lower than a corresponding threshold amount specified in paragraph (a) or (b), then the corresponding threshold for that substance pursuant to M.G.L. c. 21I and 310 CMR 50.00 shall be the same as the federal threshold.

Toxics user means the following:

(a) any person who owns or operates any facility that manufactures, processes or otherwise uses any toxic or hazardous substance and that is classified in SIC Codes 10 through 14 inclusive, 20 through 40 inclusive, 44 through 51 inclusive, 72, 73, 75 and 76.

(b) If a person owns a facility, and that person's only interest in the facility is ownership of the real estate upon which the facility is operated, then, with respect to that facility, that person is not a toxics user. This includes, without limitation, owners of facilities such as industrial parks, all or part of which are leased to persons who operate establishments within SIC codes 10 through 14 inclusive, 20 through 40 inclusive, 44 through 51 inclusive, 72, 73, 75 and 76 where the owner has no other business interest in the operation of the facility or establishment.

Toxic means toxic or hazardous.

Toxic or hazardous substance means any chemical substance in a gaseous, liquid or solid state which is identified on the toxic or hazardous substance list established pursuant to M.G.L. c. 21I, § 9 but which will not include any chemical substance when it is

(a) present in an article;

(b) used as a structural component of a facility;

(c) present in a product used for routine janitorial or facility grounds maintenance;

(d) present in foods, drugs, cosmetics or other personal items used by employees or other toxics users at a facility;

(e) present in a product used for the purpose of maintaining motor vehicles operated by a facility;

(f) present in process water or non-contact cooling water as drawn from the environment or from municipal sources, or present in air used either as compressed air or as part of combustion;

(g) present in a pesticide or herbicide when used in agricultural applications; or

(h) present in crude, lube or fuel oils or other petroleum materials being held for direct wholesale or retail sale.

Toxic or hazardous substance list means the list of toxic or hazardous substances established pursuant to M.G.L. c. 21I, § 9.

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Toxics means toxic or hazardous substances.

Toxics use fee means that fee in 301 CMR 40.00 established under, and assessed pursuant to, M.G.L. c. 21I, § 19.

Toxics use reduction means in-plant changes in production processes or raw material that reduce, avoid, or eliminate the use of toxic or hazardous substances or generation of hazardous byproducts per unit of product, so as to reduce risks to the health of workers, consumers, or the environment, without shifting risks between workers, consumers, or parts of the environment. Toxics use reduction shall be achieved through any of the following techniques:

(a) Input substitution, which refers to replacing a toxic or hazardous substance or raw material used in a production unit with a non-toxic or less toxic substance;

(b) Product reformulation, which refers to substituting for an existing end-product an end product which is non-toxic or less toxic upon use, release or disposal;

(c) Production unit redesign or modification, which refers to developing and using production units of a different design than those currently used;

(d) Production unit modernization, which refers to upgrading or replacing existing production unit equipment and methods with other equipment and methods, based on the same production unit;

(e) Improved operation and maintenance of production unit equipment and methods, which refers to modifying or adding to existing equipment or methods including, but not limited to, such techniques as improved housekeeping practices, system adjustments, product and process inspections, or production unit control equipment or methods; or

(f) Recycling, reuse, or extended use of toxics by using equipment or methods which become an integral part of the production unit of concern, including but not limited to filtration and other closed loop methods.

However, toxics use reduction shall not include or in any way be inferred to promote or require incineration, transfer from one medium of release or discharge to other media, off-site or out-of-production unit waste recycling, or methods of and-of-pipe treatment of toxics as waste.

Toxics use reduction institute or Institute mean the Toxics Use Reduction Institute established pursuant to M.G.L. c. 21I, § 6.

Toxics use reduction plan or Plan means the plan that a toxics user is required to develop in accordance with M.G.L. c. 21I, § 11 and 310 CMR 50.40.

Toxics use reduction planner or planner means an individual certified by the Department in accordance with 310 CMR 50.50.

Toxics use report means the report that a toxics user is required to submit to the Department pursuant to M.G.L. c. 21I, § 10 and 310 CMR 50.30.

Toxics use reduction planning program means an educational program in toxics use reduction developed by the Institute in accordance with M.G.L.c. 21I, § 6(E).

Trade secret means any formula, plan, pattern, process, production data, device, information, or compilation of information which is used in a toxics user's business, and which gives said toxics user an opportunity to obtain an advantage over competitors who do not know or use it.

Uniform certification examination, examination or exam means an examination prepared by the Department pursuant to M.G.L.c. 21I, s. 12.

Unit of product means a measure that reflects the level of production or activity associated with the use of the toxic or the generation of the toxic as byproduct.

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User segment means a set of no fewer than five toxics users who employ a similar production unit, classified by the department pursuant to 310 CMR 50.70. Production units grouped into a user segment must contain similar products and pocesses.

50.20: Rules for Determining Amount of Toxic Substance Manufactured, Processed, or Otherwise Used

(1) Toxics users shall follow the rules set forth in 310 CMR 50.20 for purposes of determining the amount or quantity of a toxic substance manufactured, processed, or otherwise used at a facility. This includes, without limitation, the following purposes:

(a) to determine whether the toxics user is a large quantity toxics user or a small quantity toxics user, or,

(b) to determine the amount of a covered toxic manufactured, processed, or otherwise used at a facility.

(2) When a facility manufactures, processes, or otherwise uses more than one member of a chemical category listed in 40 CFR Part 372.65(c), the toxics user shall add together each member of the chemical category in order to determine the total amount of the toxic substance manufactured, processed, or otherwise used at the facility.

(3) A facility may process or otherwise use a toxic substance in a recycle/reuse operation. To determine the amount of such toxic substances, the toxics user shall count the amount of the toxic substance added to the recycle/reuse operation during the calendar year. In particular, if the facility starts up such an operation during a calendar year, or in the event that the contents of the whole recycle/reuse operation are replaced in a calendar year, the toxics user shall also count the amount of the toxic substance placed into the system at these times.

(4) A toxic substance may be listed in 40 CFR Part 372.65 with the notation that only persons who manufacture the toxic substance, or manufacture it by a certain method, are required to report. In that case, in determining the quantity of the toxic substance manufactured at the facility, the toxics user shall consider only the amount of the toxic substance as described in 40 CFR Part 372.65.

(5) A toxic substance may be listed in 40 CFR Part 372.65 with the notation that it is in a specific form (*e.g.*, fume or dust, solution, or friable) or of a specific color (*e.g.* yellow or white). In that case, in determining the amount of the toxic substance manufactured, processed, or otherwise used at the facility, the toxics user shall consider only the amount of such toxic substances that the facility manufactures, processes, or otherwise uses in the form or of the color specified in 40 CFR Part 372.65.

(6) Metal compound categories are listed in 40 CFR Part 372.65(c). For purposes of determining the amount of the metal compound category manufactured, processed, or otherwise used at the facility, the toxics user shall consider the total amount of all members of the metal compound category manufactured, processed, or otherwise used at the facility.

(7) With respect to toxic substances present as a component of a mixture or trade name product, toxics users shall consider the quantity of the toxic substance if the toxics user knows that the toxic substance is present as a component of the mixture or a trade name product. In determining the amount or quantity of a toxic substance manufactured, processed, or otherwise used at a facility, the toxics user shall not consider the amount of the toxic substance if it is present in a mixture in concentrations equal to or below the de minimus concentration for that toxic substance set forth in 40 CFR Part 372.38(a).

(a) The toxics user knows that a toxic substance is present as a component of a mixture or trade name product

1. if the toxics user knows or has been told the chemical identity or Chemical Abstracts Service Registry Number of the substance and the identity or number corresponds to an identity or number in 40 CFR Part 372.65, or

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2. if the toxics user knows or has been told by the supplier of the mixture or trade name product, that the mixture or trade name product contains a toxic substance subject to M.G.L. c. 21I, § 313 of EPCRA or 40 CFR Part 372,65, or Sections 101(14) or 102 of CERCLA.

(b) To determine whether a toxic substance which is a component of a mixture or trade name product has been imported, processed, or otherwise used in excess of an applicable threshold at the facility, the toxics user shall consider only the portion of the mixture or trade name product that consists of the toxic substance and that is imported, processed, or otherwise used at the facility as follows:

1. If the toxics user knows the specific chemical identity of the toxic substance and the specific concentration at which it is present in the mixture or trade name product, the toxics user shall determine the weight of the toxic substance imported, processed, or otherwise used as part of the mixture or trade name product at the facility and shall combine that with the weight of the toxic substance manufactured (including imported) processed, or otherwise used at the facility other than as part of the mixture or trade name product.

2. If the toxics user knows the specific chemical identity of the toxic substance and does not know the specific concentration at which the toxic substance is present in the mixture or trade name product, but has been told the upper bound concentration in the mixture or trade name product, the toxics user shall assume that the toxic substance is present in the mixture or trade name product at the upper bound concentration, and shall determine the quantity of the toxic substance manufactured, processed, or otherwise used at the facility in accordance with 310 CMR 50.20(7)(b)1.

3. If the toxics user knows the specific chemical identity of the toxic substance, does not know the specific concentration at which the toxic substance is present in the mixture or trade name product, has not been told the upper bound concentration of the toxic substance in the mixture or trade name product, and has not otherwise developed information on the composition of the toxic substance in the mixture or trade name product, then the toxics user need not consider that toxic substance in that mixture or trade name product in determining the amount of the toxic substance manufactured, processed, or otherwise used at the facility.

4. If the toxics user has been told that a mixture or trade name product contains a toxic substance, does not know the specific chemical identity of the toxic substance and knows the specific concentration at which it is present in the mixture or trade name product, the toxics user shall determine the weight of the toxic substance imported, processed, or otherwise used as part of the mixture or trade name product at the facility. Since the toxics user does not know the specific identity of the toxic substance, with respect to that toxic substance, the toxics user shall determine whether the facility is a large quantity toxics user or a small quantity toxics user based on the weight of that toxic substance present in the mixture or trade name product.

5. If the toxics user has been told that a mixture or trade name product contains a toxic substance, does not know the specific chemical identity of the toxic substance, and does not know the specific concentration at which the toxics substance is present in the mixture or trade name product, but has been told the upper bound concentration of the toxic substance in the mixture or trade name product, the toxics user shall assume that the toxic substance is present in the mixture or trade name product at the upper bound concentration, and shall determine the quantity of the toxic substance manufactured, processed, or otherwise used at the facility in 310 CMR 50.20(7)(b)1.

6. If the toxics user has been told that a mixture or trade name product contains a toxic substance, does not know the specific chemical identity of the toxic substance, does not know the specific concentration at which the toxic substance is present in the mixture or trade name product, including information they have themselves developed, and has not been told the upper bound concentration of the toxic substance in the mixture or trade name product, the toxics user need not consider such toxic substance for purposes of determining quantities of toxic substances manufactured, processed, or otherwise used at the facility.

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(8) A facility may consist of more than one establishment. In determining the amount of a toxic substance manufactured, processed, or otherwise used at a facility, the toxics user shall consider the amount of the toxic substance manufactured, processed, or otherwise used at each establishment within the facility.

(9) In determining the amount of a toxic substance manufactured, processed, or otherwise used in a laboratory at a facility, the toxic user need not consider the quantity of such toxic substances if, pursuant to 40 CFR Part 372.38(d), the toxic substance is manufactured, processed, or otherwise used in a laboratory at a facility under the supervision of a technically qualified individual as defined in 40 CFR Part 720.3(ee). This exemption does not apply in the following circumstances:

(a) Specialty chemical production;
(b) Manufacture, processing, or use of toxic substances in pilot plant scale operations;
(c) Activities conducted outside the laboratory.

50.30: Toxics Use Reports

310 CMR 50.30 - 50.39, cited collectively as 310 CMR 50.30, establishes reporting requirements for toxics users.

50.31: Applicability

(1) For facilities that are classified by SIC codes 20 through 39 inclusive, large quantity toxics users shall submit to the Department a toxics use report in accordance with 310 CMR 50.32(1) on or before July 1, 1991.

(2) For facilities that are classified by SIC codes 10 through 14 inclusive, 40, 44 through 51 inclusive, 72, 73, 75 and 76, large quantity toxics users shall submit to the Department a toxics use report in accordance with 310 CMR 30.31(2) on or before July 1, 1992.

(3) Toxics users need not submit reports for facilities that have less than ten full-time employees unless:

(a) the facility is within a priority user segment pursuant to M.G.L. c. 21I, § 14, and
(b) the Department requires the toxics user to submit a report for the facility in accordance with M.G.L. c. 21I, §§ 10 and 14.

(4) Small quantity toxics users need not submit reports for facilities unless:

(a) the facility is within a priority user segment pursuant to M.G.L. c. 21I, § 14, and
(b) the Department requires the toxics user to submit a report for the facility in accordance with M.G.L. c. 21I, §§ 10 and 14.

50.32: Reporting Requirements

(1) On or before July 1 of each year, toxics users shall submit a toxics use report including information associated with each covered toxic manufactured, processed, or otherwise used at a facility in accordance with 310 CMR 50.00.

(2) For facilities that consist of more than one establishment, and that manufacture, process, or otherwise use a covered toxic, the toxics user may submit a separate report for each establishment or for each group of establishments, provided that information associated with the manufacturing, processing, or other use of that covered toxic at all the establishments within the facility is reported in accordance with 310 CMR 50.00, including, without limitation 310 CMR 50.20 and 310 CMR 50.30. If each establishment or group of establishments files separate reports then for all other covered toxics at that facility they must also submit separate reports.

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(3) With respect to activities at a facility involving a covered toxic, when more than one threshold amount applies to the activities, the report shall include information associated with all activities involving that covered toxic at the facility. Such information shall be reported in accordance with 310 CMR 30.50, including, without limitation, 310 CMR 50.20 and 310 CMR 50.30.

(4) With respect to metal compounds that are covered toxics, the toxics user need only include in the report information associated with the parent metal, and need not include in the report information associated with other components of the metal compound in the metal compound category.

(5) A senior management official of the facility shall certify the accuracy and completeness of the report by signing a certification statement that accurately identifies the report. Falsification of information in the report, including the certification statement, shall be a violation of 310 CMR 50.00 for which the Department may take an enforcement action.

(6) A toxics use report shall include information based on the quantity of each covered toxic manufactured, processed, or otherwise used at the facility during the calendar year preceding the date on which the toxics use report is due.

(7) In calculating, measuring, or estimating quantities of a toxic or hazardous substance to be reported pursuant to 310 CMR 50.30, toxic users shall report with the maximum accuracy that is feasible and practicable. Toxics users shall report quantities with accuracy to two significant digits.

(8) If a toxics user discovers, after submitting a report, that there is a gross error in any or all of the information contained in the report, the toxics user shall, in writing, so notify the Department within 14 days of the date of discovery. The toxics user shall submit corrections to the report within 30 days of such notification. Nothing in 310 CMR 50.32(8) shall preclude the Department from taking any other approporiate action, including, without limitation, an enforcement action.

(9) The Department may require the toxics user to amend or supplement any report submitted prior to the current reporting year if the toxics user changes any of the following:

(a) the base year;

(b) the unit of product used to calculate either the byproduct reduction index or the emissions reduction index;

(c) an estimating method used to determine information in the toxics use report if using the new method would significantly alter information in a previously submitted report.

Nothing in 310 CMR 50.32(9) shall preclude the Department from taking any other appropriate action, including, without limitation, an enforcement action.

(10) Each toxics use report shall contain the information set forth in 310 CMR 50.33, and shall be submitted on forms prescribed by the Department set forth in 310 CMR 50.34. In completing the reporting forms, the toxics user shall comply with the Department's "Instructions for Toxics Use Reports".

(11) Each toxics use report shall consist of the following completed forms:

(a) 1 Form R; and

(b) 1 Form S.

(12)(a) With respect to the information required pursuant to 310 CMR 50.33(3) to be reported on the Form S, toxic users need not report information associated with the following entities.

1. pilot plants
2. pilot production units
3. start-up production units for a time period equal to the shorter of either (i) the time period from the date of initial operation until required operational efficiency is achieved, or (ii) two years from the date of initial operation.

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(b) With respect to all other information required pursuant to 310 CMR 50.33 to be reported on the Form S, toxics users shall include information associated with the entities set forth in 310 CMR 50.32(12)(a)1., 2. and 3.

(13) The unit of product used to calculate the byproduct reduction indicies and emission reduction indices pursuant to 310 CMR 50.33(3)(d) and 310 CMR 50.33(e) shall be physical measure except as provided in 310 CMR 50.33(g).

50.33: Content of Report

Each toxics use report shall contain the following information:

(1) the information required to be submitted under regulations promulgated pursuant to section 313 of EPCRA;

(2) the quantities of the toxic or hazardous substance at the facility which are: manufactured; processed; otherwise used; generated as byproduct prior to any handling, transfer, treatment or release; and shipped as or in products from the facility; and,

(3) for each production unit at the facility in which the toxic or hazardous substance is manufactured, processed or otherwise used, each toxics use report shall also include the following information:

(a) the information necessary to identify the toxics user, the facility, the toxic or hazardous substance, and the production unit. The production unit shall be identified by providing the information set forth in 310 CMR 50.34.

(b) an indication of whether the toxic or hazardous substance was used in the production unit in amounts:

1. greater than zero pounds and less than or equal to 5,000 pounds;
2. greater than 5,000 pounds but less than or equal to 10,000 pounds; or
3. greater than ten thousand pounds. Amounts used in waste treatment shall not be included in determining the amount used in the production unit but shall be reported separately in accordance with 310 CMR 50.34.

(c) the reporting base year, which shall be the later of:

1. the first calendar year for which the toxics user was or is required to file any information regarding the toxic or hazardous substance pursuant to 310 CMR 50.00 or Section 313 EPCRA; or
2. the first year for which the toxics user has full information necessary to document the information required to be reported pursuant to 310 CMR 50.34(3).

(d) a byproduct reduction index which shall be a number that is the result of the following equation: 100 times [(A less B) divided by A], where A represents the quantity of toxics generated as byproduct per unit of product produced in the reporting base year, and B represents the quantity of toxics generated as byproduct per unit of product produced in the current reporting year.

(e) an emissions reduction index which shall be a number that is the result of the following equation: 100 times [(A less B) divided by A], where A represents the quantity of emissions attributable to the production unit per unit of product produced in the reporting base year, and B represents the quantity of emissions attributable to the production unit per unit of product produced in the reporting base year, and B represents the quantity of emissions attributable to the production unit per unit of product produced in the current reporting year.

(f) A matrix form on which the toxics user indicates the methods by which the increase in the byproduct reduction index was achieved for each production operation during the reporting year. On the horizontal axis of the matrix shall be listed the toxics use reduction techniques of: input substitution, product reformulation, production unit redesign, production unit modernization, improved operation and maintenance of production units, and recycling or reuse which is integral to the production unit. The horizontal axis shall also list the management technique of using byproduct as product, and shall contain a column labelled "miscellaneous". On the vertical axis of the matrix shall be listed: materials handling and storage, processing operations, and finished goods handling.

50.33: continued

(g) a description of the unit of product used to calculate the byproduct reduction index and the emissions reduction index. A non-physical measure may be used if developing a physical measure is not feasible. If a non-physical measure is used, the report shall include an explanation of:

1. why a physical measure cannot be used; and
2. how the non-physical measure has been adjusted to accurately relect the level of production or activity associated with the use of the toxic or the generation of the toxic as a byproduct.

(4) Each report shall also indicate any of the following changes:

(a) a change in a unit of product used to calculate either the byproduct reduction index or the emissions reduction index;

(b) a change in a reporting base year; or

(c) a change in estimating method used to determine information in the toxics use report if using the new method would significantly alter information in a previously submitted report.

(d) whether or not the production unit was included in the report due on the previous July 1.

50.34: Reporting Forms

Page 1 of _____

Massachusetts Department of Environmental Protection

TURA REPORT - COVER SHEET

Toxics Use Reduction Act - Form S Cover Sheet

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Section 1: General Information

1.1 ATTACH MAILING LABEL with facility name address & DEP Facility Identification Nuber ³ ³ ³ ³ ATTACH CORRECTED MAILING LABEL or enter facility, name & address

1.2 Are you making a trade secret claim for any of the information subitted in this COVER SHEET and/or Form S(s)? ____YES ____NO

1.3 If YES, attach a statement substantiating the claim. Is this copy: ____Sanitized ____Unsanitized

1.4 This report is being filed for reporting year: 19___________

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Section 2: Certification Statement

2.0 This CERTIFICATION STATEMENT should be signed after all the forms have been completed.

I hereby certify that I have reviewed this and all attached documents and that, to the best of my knowledge and belief, the submitted information is true and complete and that the amounts and values in these documents are accurate based on measurements and/or reasonable estimates using data available to the preparers of these documents. I am aware that there are significant penalties for willful or intentional submission of false or incomplete information.

_______________________________________ _______________________________________

Authorized Signature Print Name

_______________________________________ _______________________________________

Position/Title
Date

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Section 3: Chemicals Previously Reported That Are Not Reportable This Year

3.0 OPTIONAL QUESTION. In this section, you may provide information on any chemical reported last year that is not subject to reporting this year. If you substituted a non-listed chemical for a TURA chemical, you may identify the substitution, as well.

The codes to explain why the chemical is not reportable are: [1] Chemical Below Threshold But > 0 [2] No Chemical Usage in Reporting Year [3] Chemical Substitution [4] Chemical Eliminated (No Substitution) [5] Decline in Business [6] Other (Explain below in the additional comments section). Enter all the codes that apply.

3.1 _______________________________________ _______________________________________

CAS # of Chemical Not Reportable (if applicable) Chemical Name

Explanation of Why the Chemical Is Not Reportable. (Enter Code): |___| |___| |___| |___|

_______________________________________ _______________________________________

CAS # of Chemical Substituted for TURA Chemical Chemical Name

3.2 _______________________________________ _______________________________________

CAS # of Chemical Not Reportable (if applicable) Chemical Name

Explanation of Why the Chemical Is Not Reportable. (Enter Code): |___| |___| |___| |___|

_______________________________________ _______________________________________

CAS # of Chemical Substituted for TURA Chemical Chemical Name

Additional Comments:____

____

50.34: continued

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FACILITY NAME TOWN or TURA ID#

FORM S COVER SHEET (continued)

Section 4: *Facility-Wide Listing of Production Units*

A PRODUCTION UNIT is best thought of as the combination of the process (or activities) used to produce a product or service and the product or service. In this block, please identify the PRODUCTION UNITS at the facility, then use the production unit number to report on chemical usage in the attached Form S. If there is a substantial change in a PRODUCTION UNIT from one reporting year to the next, the PRODUCTION UNIT must be given a new, unique number.

Production Unit #:
_____

This Production Unit (Process/Product Combination) is: _____ **The Same As Reported Last Year** _____ **New**

Describe the Process: _____

_____

_____

Describe the Product: _____

_____

Enter the four-digit SIC Code(s) that best describe(s) the product:

|____|____|____|____| |____|____|____|____| |____|____|____|____| |____|____|____|____|

Describe the Unit of Product:_____
(Please specify if the Unit of Product has been changed since the previous reporting year.)

PRODUCTION PROCESS STEP INFORMATION FOR THIS PRODUCTION UNIT

Enter the production process code(s) to identify the process step(s) that involves a TUR-reportable chemical(s) as an input, output or throughput. (See the reporting guidance document for the list of production process codes and instructions on when a given code needs to be listed.)

1. |____|____|____|____| 2. |____|____|____|____| 3. |____|____|____|____| 4. |____|____|____|____|

5. |____|____|____|____| 6. |____|____|____|____| 7. |____|____|____|____| 8. |____|____|____|____|

List below, the TURA-reportable chemicals associated with the production unit. If a chemical is associated with ALL the process steps identified above, check the ALL block. If the chemical is associated with some but not all of the process steps, put the relevant code(s) (from above) next to the chemical.

Chemical(s)	Production Process(es)
_____ Chemical Name	____ALL |____|____|____|___| |____|____|____|____|
_____ CAS #	|____|____|____|____| |____|____|____|____|
_____ Chemical Name	____ALL |____|____|____|___| |____|____|____|____|
_____ CAS #	|____|____|____|____| |____|____|____|____|
_____ Chemical Name	____ALL |____|____|____|___| |____|____|____|____|
_____ CAS #	|____|____|____|____| |____|____|____|____|

50.34: continued

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FACILITY NAME TOWN or TURA ID#

FORM S COVER SHEET (Continuation Page, for use, if necessary)

Section 4: *Facility-Wide Listing of Production Units*

Production Unit #:

____

PRODUCTION PROCESS STEP INFORMATION FOR THIS PRODUCTION UNIT

Enter the production process code(s) to identify the process step(s) that involves a TUR-reportable chemical(s) as an input, output or throughput. (See the reporting guidance document for the list of production process codes and instructions on when a given code needs to be listed.)

1. |____|____|____|____| 2. |____|____|____|____| 3. |____|____|____|____| 4. |____|____|____|____|

5. |____|____|____|____| 6. |____|____|____|____| 7. |____|____|____|____| 8. |____|____|____|____|

List below, the TURA-reportable chemicals associated with the production unit. If a chemical is associated with ALL the process steps identified above, check the ALL block. If the chemical is associated with some but not all of the process steps, put the relevant code(s) (from above) next to the chemical.

Chemical(s) Production Process(es)

______________________________ ____ALL |____|____|____|___| |____|____|____|____|
Chemical Name

______________________________ |____|____|____|____| |____|____|____|____|
CAS #

______________________________ ____ALL |____|____|____|___| |____|____|____|____|
Chemical Name

______________________________ |____|____|____|____| |____|____|____|____|
CAS #

______________________________ ____ALL |____|____|____|___| |____|____|____|____|
Chemical Name

______________________________ |____|____|____|____| |____|____|____|____|
CAS #

______________________________ ____ALL |____|____|____|___| |____|____|____|____|
Chemical Name

______________________________ |____|____|____|____| |____|____|____|____|
CAS #

______________________________ ____ALL |____|____|____|___| |____|____|____|____|
Chemical Name

______________________________ |____|____|____|____| |____|____|____|____|
CAS #

______________________________ ____ALL |____|____|____|___| |____|____|____|____|
Chemical Name

______________________________ |____|____|____|____| |____|____|____|____|
CAS #

50.34: continued

Page _____ of _____

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FACILITY NAME TOWN or TURA ID#

Massachusetts Department of Environmental Protection

TURA REPORT - FORM S

Toxics Use Reduction Act - Chemical Usage Facility-Wide & by Production Units

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Section 1: Facility-Wide Usage of Listed Chemical

1.1 ____ ____
Chemical Abstract Service (CAS) Number (if applicable) Chemical Identification (from Form R)

1.2 Facility-Wide Usage of Chemical Identified in 1.1 above. Enter total amount (in POUNDS) for each applicable category.

NOTE: Byproduct (item 1.2d) generally means all wastes containing the listed chemical before the waste is treated or recycled. Read the instructions carefully, however, before completing this section.

1.2a Manufactured: ________________________ ³ 1.2d Generated as Byproduct: ________________________

1.2b Processed: ________________________ 1.2e Shipped in or as Product: ________________________

1.2c Otherwise Used: ________________________

1.3 OPTIONAL QUESTION. When the amounts reported in 1.2a, 1.2b, and 1. ³ c are added together, the sum will -- in many cases -- equal the sum of 1.2d and 1.2e. In other words, the left and right columns will often form a "materials balance." If the two columns are not in approximate balance, you may use this block to explain why. Mark all the reasons that apply.

_____ Chemical was recycled on site. | _____ Chemical was consumed or transformed.

_____ Chemical was held in inventory. | _____ Chemical is a compound.

_____ Other (explain): |

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1.4 OPTIONAL QUESTION: Did anything non-routine occur at your facility during the reporting year which affected the data reported?

_____ YES _____ NO If YES, you may use this space to comment: ____

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Section 2: Chemicals Used in Waste Treatment Units

2.1 Is this chemical used to treat waste or control pollution? _____ YES_____ NO

If YES, enter the quantity of chemical code for the amount used to treat waste or control pollution: |___|

OPTIONAL -- You may enter the amount: ___________________

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Section 3: TURA Report on Production Unit #: ___________ (Enter # from the Form S Cover Sheet.)

3.1 Base Year: ___________ 3.4 Byproduct Reduction Index: _______

3.2 Quantity of Chemical Code: |___| 3.5 Emissions Reduction Index: _______

3.3 Toxics Use Reduction Techniques Code: |___|___| |___|___| |___|___| |___|___| |___|___| |___|___| |___|___|

If there has been a change from one reporting year to the current year in a (1) base year, and/or (2) estimating methods (that significantly alter previously reported data) for this PRODUCTION UNIT REPORT, describe the change:

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50.34: continued

Page _____ of _____

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FACILITY NAME TOWN or TURA ID#

CHEMICAL: ÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄÄ

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TURA Report on Production Unit #: ___________ (Enter # from the Form S Cover Sheet.)

3.1 Base Year: ___________ 3.4 Byproduct Reduction Index: _______

3.2 Quantity of Chemical Code: |___| 3.5 Emissions Reduction Index: _______

3.3 Toxics Use Reduction Techniques Code: |___|___| |___|___| |___|___| |___|___| |___|___| |___|___| |___|___|

If there has been a change from one reporting year to the current year in a (1) base year, and/or (2) estimating methods (that significantly alter previously reported data) for this PRODUCTION UNIT REPORT, describe the change:

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TURA Report on Production Unit #: ___________ (Enter # from the Form S Cover Sheet.)

3.1 Base Year:___________ 3.4 Byproduct Reduction Index: _______

3.2 Quantity of Chemical Code: |___| 3.5 Emissions Reduction Index: _______

3.3 Toxics Use Reduction Techniques Code: |___|___| |___|___| |___|___| |___|___| |___|___| |___|___| |___|___|

If there has been a change from one reporting year to the current year in a (1) base year, and/or (2) estimating methods (that significantly alter previously reported data) for this PRODUCTION UNIT REPORT, describe the change:

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TURA Report on Production Unit #: ___________ (Enter # from the Form S Cover Sheet.)

3.1 Base Year: ___________ 3.4 Byproduct Reduction Index: _______

3.2 Quantity of Chemical Code: |___| 3.5 Emissions Reduction Index: _______

3.3 Toxics Use Reduction Techniques Code: |___|___| |___|___| |___|___| |___|___| |___|___| |___|___| |___|___|

If there has been a change from one reporting year to the current year in a (1) base year, and/or (2) estimating methods (that significantly alter previously reported data) for this PRODUCTION UNIT REPORT, describe the change:

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TURA Report on Production Unit #: ___________ (Enter # from the Form S Cover Sheet.)

3.1 Base Year: ___________ 3.4 Byproduct Reduction Index: _______

3.2 Quantity of Chemical Code: |___| 3.5 Emissions Reduction Index: _______

3.3 Toxics Use Reduction Techniques Code: |___|___| |___|___| |___|___| |___|___| |___|___| |___|___| |___|___|

If there has been a change from one reporting year to the current year in a (1) base year, and/or (2) estimating methods (that significantly alter previously reported data) for this PRODUCTION UNIT REPORT, describe the change:

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50.34: continued

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Toxics Use Reduction Techniques Matrix

In this matrix, toxic use reduction techniques mark the rows and production operations head the columns. Within the matrix, a two-digit code appears the intersection of each row and column.

If a technique as applied to a production operation accounted for an increase of five or more points in the byproduct reduction index between the base year and reporting year, enter the code for that matrix cell in BLOCK 3.4 of FORM S. Enter all the codes that apply.

You may enter a "miscellaneous" code if two or more techniques (not otherwise entered) together accounted for an increase of five or more points.

	Materials Handling/Storage	Processing Operations	Finished Goods Handling
INPUT SUBSTITUTION: Changing the raw materials of product to use non- or less toxic materials.	10	11	12
PRODUCT REFORMULATION: Reformulating or redesigning end-products to be non- or less toxic upon use, release, or disposal.	20	21	22
PRODUCTION UNIT REDESIGN OR MODIFICATION: Using production units of a different design than those used previously.	30	31	32
PRODUCTION UNIT MODERNIZATION: Upgrading or replacing production unit equipment or methods.	40	41	42
IMPROVED OPERATION & MAINTENANCE OF PRODUCTION UNIT EQUIPMENT & METHODS: Modifying existing equipment/ methods by such steps as improved housekeeping, system adjustments or process/product inspections.	50	51	52
RECYCLING, REUSE, OR EXTENDED USE OF TOXICS: Using equipment/methods that are integral to the production unit.	60	61	62
MANAGEMENT TECHNIQUE OF USING BYPRODUCT AS PRODUCT: Use of byproduct without further treatment when the byproduct would have otherwise been released, treated, or shipped off-site for recycling/reuse.	70	71	72
MISCELLANEOUS	80	81	82

50.35: Deficient Toxics Use Reports

(1) The Department may review reports and any or all information or documentation supporting the information reported.

(2) If the Department determines that a deficiency in a report was unintentional, then the Department shall allow the toxics user 90 days from the date of written notice of the deficiency to correct the deficiency. Failure to correct the deficiency within 90 days from the date of the written notice of the deficiency, shall be a violation of 310 CMR 50.00 for which the Department may take an enforcement action.

(3) A deficiency in a report that the Department determines to be an intentional deficiency shall be a violation of 310 CMR 50.00 for which the Department may take an enforcement action.

50.36: Recordkeeping Requirements

(1) The toxics user shall establish and maintain at the facility documentation which is necessary to substantiate all information submitted in each report, including, but not limited to, the following:

(a) documentation required by 40 CFR Part 372.10;

(b) documentation supporting the toxics user's determination of the quantity of the toxic substance manufactured, processed, or otherwise used at the facility. If, in determining the quantity of the toxic substance manufactured, processed or otherwise used at the facility, the toxics user does not consider any or all of a toxic substance pursuant to 310 CMR 50.20, the toxics user shall maintain documentation necessary to support the exclusion;

(c) documentation supporting the toxics user's determination of the quantity of the covered toxic generated as byproduct, prior to any handling, treatment, transfer, or release, by the facility;

(d) documentation supporting the toxics user's determination of the quantity of the covered toxic shipped from the facility as or in product;

(e) documentation supporting the toxics user's determination of the amount of the covered toxic manufactured, processed, or otherwise used in each production unit at the facility;

(f) documentation supporting the toxics user's determination of the quantity of the covered toxic generated as byproduct by each production unit;

(g) documentation supporting the toxics user's determination of the byproduct reduction index for each production unit included in the report, including, without limitation, the following:

1. the actual calculation;
2. the amount of the toxic generated as byproduct by the production unit in both the reporting year and the base year, and the number of units of product produced by the production unit in both the reporting year and the base year;
3. documentation that describes and defines the unit of product;

(h) documentation supporting the toxics user's determination of the emission reduction index, including, without limitation, the following:

1. the actual calculation, and,
2. the amount of the toxic emitted by the production unit in both the reporting year and the base year, and the number of units of product produced by the production unit in both the reporting year and the base year;
3. documentation that describes and defines the unit of product;

(i) for each production unit included in the report, documentation supporting and explaining the toxics user's designation of the production unit.

(j) for each production unit included in the report the following documentation:

1. documentation supporting the toxics user's determination that implementation of a specific toxics use reduction technique, management technique, or combination of techniques resulted in an increase five points or more in the byproduct reduction index for a specific production operation;

50.36: continued

2. an explanation and description of each toxics use reduction technique, management technique, or combination of techniques used to achieve a five or more point increase in the byproduct reduction index, including a description of how the toxics use reduction technique, management technique, or combination of techniques was used on the production operation.

(2) If a toxics user claims that the facility has less than 10 full-time employees and is exempt from the reporting requirements of 310 CMR 50.30 pursuant to 310 CMR 50.31(3), the toxics user shall maintain documentation at the facility supporting such claim.

(3) If a toxics user does not include in the toxics use report information associated with a pilot plant, a pilot production unit, or a start-up production unit pursuant to 310 CMR 50.32(12)(a)1., 2., or 3., the toxics user shall maintain documentation necessary to support the determination that the pilot plant, pilot production unit, or start-up production unit is excluded pursuant to 310 CMR 50.32(12)(a)1., 2. or 3. The toxics user shall also maintain documentation necessary to explain any discrepancy between the total quantity of the covered toxic manufactured, processed, or otherwise used by the facility as reported in the report and the aggregate quantity of the covered toxic manufactured, processed, or otherwise used by all production units for which information is included in the report attributable to the pilot plant, pilot production unit, or start-up production unit for which information is not included in the report.

(4) The toxics user shall maintain at the facility a copy of each toxics use report, and supporting documentation, submitted for the reporting base year for as long as the facility operates. The toxics user shall maintain at the facility a copy of each toxics use report, and supporting documentation, submitted for years other than the reporting base year, for a period of at least five years after the date that the report was due.

(5) All records and documentation established or maintained pursuant to 310 CMR 50.36(5) shall be readily available for purposes of inspection and copying by the Department.

50.40: Toxics Use Reduction Plans

310 CMR 50.40 through 50.49, cited collectively as 310 CMR 50.40, establishes requirements for developing toxics use reduction plans.

50.41: Applicability and Schedule

(1) Large quantity toxics users shall prepare and complete a toxics use reduction plan for each facility for which they are required to file a toxic use report pursuant to 310 CMR 50.30 in accordance with the following schedule:

(a) For large quantity toxics users required to submit toxics use reports pursuant to 310 CMR 50.30 on July 1, 1993, plans shall be complete on or before July 1, 1994;

(b) For large quantity toxics users required to submit toxics use reports pursuant to 310 CMR 50.30 after July 1, 1993 that were not required to file toxics use reports on July 1, 1993, plans shall be complete by July 1 of the first subsequent year for which a report is due.

(2) Toxics users need not submit plans for facilities that have less than ten full-time employees unless:

(a) the facility is within a priority user segment pursuant to M.G.L. c. 21I, § 14, and

(b) the Department requires the toxics user to submit a report for the facility in accordance with M.G.l. c. 21I, §§ 11 and 14.

(3) Small quantity toxics users need not submit reports for facilities unless:

(a) the facility is within a priority user segment pursuant to M.G.L. c 21I, § 14, and

(b) the Department requires the toxics user to submit a report for the facility in accordance with M.G.l. c. 21I, §§ 11 and 14.

50.41: continued

(4) On or before the date that a plan must be complete pursuant to 310 CMR 50.41(1), toxics users shall submit to the Department a plan summary in accordance with 310 CMR 50.47.

(5) Toxics users shall complete plan updates every two years beginning with the date on which the initial plan is due pursuant to 310 CMR 50.41(1) by July 1 of the applicable year in accordance with 310 CMR 50.48.

310 CMR 50.42: General Plan Requirements

(1) All plans, plan summaries, and updates shall include each covered toxic required, pursuant to 310 CMR 50.30, to be included in the facility's toxics use report due on the same date that the plan is due.

(2) All plans, plan summaries, and updates shall include each production unit required, pursuant to 310 CMR 50.30, to be included in the facility's toxics use report due on the same date that the plan is due.

(3) Each plan and each plan update shall include the following written statement signed by a certified toxics use reduction planner: "Based on my independent professional judgment as a toxics use reduction planner, I certify under penalty of law that the following is true:

(a) I have examined and am familiar with this toxics use reduction plan;

(b) the plan satisfies the requirements of 310 CMR 50.40; and

(c) the plan demonstrates a good faith and reasonable effort to identify and evaluate toxics use reduction options."

(4) Each plan and each plan update shall include the following written statement signed by the senior management official of the facility: "I certify under penalty of law that the following is true:

(a) I have personally examined and am familiar with this toxics use reduction plan;

(b) I am satisfied that any supporting documentation used in the development of the plan exists and is consistent with the plan;

(c) based on my inquiry of those individuals immediately responsible for the development of this plan, I believe that the informaiton in the plan and any supporting documentation used in the development of the plan is true, accurate, and complete;

(d) the plan, to the best of my knowledge and belief, meets the requirements of 310 CMR 50.40;

(e) I am aware that there are penalties for submitting false information, including possible fines and imprisonment."

(5) Six months prior to the date when the plan or plan update must be complete, the toxics user shall notify all of its employees of the requirements of the plan or plan update, identify the toxics and production units for which a plan or a plan update will be submitted, provide the criteria for plans, and solicit in the notice comments or suggestions from all employees on toxics use reduction options. The plan shall include a description of the steps taken by the toxics user in order to comply with 310 CMR 50.42(5).

(6) In determining the amounts pursuant to 310 CMR 50.43(3), 50.44(2), 50.44(5), 50.44(6), 50.46(3)(b), and 50.46(6)(c), the plan shall:

(a) refer to documents or other information used to determine these amounts, and shall specify the location of such documents or information;

(b) include calculations of the amounts; and,

(c) state any assumptions made by the toxics user.

(7) Toxics users shall maintain plans for a facility on the premises of that facility, and shall make plans available on the premises to the Department upon request. Toxics users shall also make supporting documentation referred to in 310 CMR 50.42(6) available to the Department upon request. Toxics users shall maintain plans and supporting documentation for at least five years after the date that the plan is due.

50.42: continued

(8) Toxics users shall develop information required by 310 CMR 50.40 in accordance with standard accounting practices;

(9) Toxics users shall develop information required by 310 CMR 50.40 in accordance with standard engineering practices;

(10) Toxics users shall develop information required by 310 CMR 50.40 in good faith.

(11) Toxics users shall demonstrate a good faith and reasonable effort to identify and evaluate toxics use reduction options.

50.43: Facility-Wide Information Required in Each Plan

Toxics users shall develop and include in the plan the following facility-wide information:

(1) a statement of the management policy of the facility regarding toxics use reduction. This statement shall include, but not be limited to, a description of the ways in which the toxics user encourages toxics use reduction and a description of any policy applicable to the facility that encourages or discourages toxics use reduction. This statement may include, without limitation, the following information:

(a) a description of how toxics use reduction affects the facility's policy or decisions concerning research and development;

(b) a description of how toxics use reduction affects the facility's policy or decisions concerning financial investments or capital investments;

(c) a description of how toxics use reduction affects the facility's policy or decisions concerning hiring, promotions or bonuses, or other incentives, for facility employees;

(d) any other policy applicable to the facility that encourages or discourages toxics use reduction.

(2) a statement of the scope of the plan. This statement shall include but not be limited to the following:

(a) a description of each production unit included in the plan. The description of each production unit shall include the following information as reported in the facility's toxics use report due on the same date that the plan is due:

1. the number assigned to the production unit;
2. the process or processes associated with the production unit;
3. the product produced by the production unit; and,
4. the chemical name and CAS number of each covered toxic manufactured, processed, or otherwise used in the production unit.

(b) a summary of the identification process pursuant to 310 CMR 50.46(1);

(c) a brief description of the technologies, procedures, or training programs identified pursuant to 310 CMR 50.46(5), (6) and (7).

(3) the expected change in the use of each covered toxic and in the amount of each covered toxic generated as byproduct. The expected change shall be determined in accordance with 310 CMR 50.43(4), shall be based on the toxics use reduction techniques chosen to be implemented as identified in the plan or plan update, and shall be stated as:

(a) the amount in pounds by which the toxics user plans to increase or decrease the use of the toxic;

(b) the percent by which the toxics user plans to increase or decrease the use of the toxic;

(c) the amount in pounds by which the toxics user plans to increase or decrease the amount of the toxic generated as byproduct; and,

(d) the percent by which the toxics user plans to increase or decrease the amount of the toxic generated as byproduct.

50.43: continued

(4) The expected increase or decrease determined pursuant to 310 CMR 50.43(3) shall be projected over two and five year periods as follows:

(a) the amounts determined pursuant to 310 CMR 50.43(3)(a) and (c) shall be for the calendar year after the calendar year in which the plan is due and for the calendar year that is four years after the calendar year in which the plan is due.

(b) the percents determined pursuant to 310 CMR 50.43(3)(b) and (d) shall be measured starting from the base year as determined pursuant to 310 CMR 50.33(3)(c), and shall be for the calendar year after the calendar year in which the plan is due and for the calendar year that is four years after the calendar year in which the plan is due.

50.44: Production Unit Information Required in Each Plan

For each production unit, toxics users shall determine or develop, and include in the plan, the following information:

(1) a process flow diagram in accordance with the following:

(a) The process flow diagram shall be a visual representation of the movement of covered toxics through the process or processes within the production unit, including, but not limited to, covered toxics that flow into the process or processes and covered toxics that flow out of the process or processes as byproducts or products and covered toxics that are released to the environment as emissions or transferred off-site as emissions. The process flow diagram shall account for each manufacturing or process step in the production unit, and shall include waste treatment activities, and recycling activites that are not integral to the production unit, associated with the production unit. The process flow diagram may represent the movement of substances or other materials that are not covered toxics through the process or processes within the production unit.

(b) The number assigned to the production unit as reported in the facility's toxics use report due on the same date that the plan is due shall appear on the process flow diagram.

(c) The process flow diagram shall present the movement of each covered toxic through the production unit, including, but not limited to, each general location at which the covered toxic enters the production unit and each general location at which the covered toxic exits the production unit as a byproduct, emission, or product.

(2) the following amounts, and a statement of the estimation methods used to determine these amounts:

(a) the total amount, and the amount per unit of product, of each covered toxic manufactured, processed, or otherwise used;

(b) the total amount, and the amount per unit of product, of each covered toxic generated as a byproduct;

(c) the total amount, and the amount per unit of product, of each covered toxic released or transferred off-site as an emission.

(3) the unit of product associated with the production unit as reported in the toxics use report due on the date that the plan is due.

(4) for each toxic, a statement explaining the purpose that the toxic serves in the production unit;

(5) for each byproduct identified on the process flow diagram developed pursuant to 310 CMR 50.44(1), toxics users shall determine the amount of byproduct treated on-site, treated off-site, recycled on-site, recycled off-site, disposed of on-site,disposed of off-site, or released.

(6) for each emission identified in the process flow diagram developed pursuant to 310 CMR 50.44(1), toxics users shall determine, for each environmental media, the amount of emissions released to the environment or transferred off-site, and the amount of emissions treated off-site treatment, recycled off-site, disposed of on-site or disposed of off-site.

50.44: continued

(7) the cost of the use of each covered toxic calculated in accordance with 310 CMR 50.45.

(8) goals for the byproduct reduction index reported in the toxics use report due on the July 1 two years after the date on which the plan is due and a goal for the byproduct reduction index reported in the toxics use report due on the July 1 five years after the date on which the plan is due. Such goals shall be developed based on the toxics use reduction techniques chosen to be implemented as identified in the plan.

50.45: Cost of Toxics

(1) For each production unit, toxics users shall determine the total cost per year of the covered toxic and the cost of the covered toxic per unit of product. Toxics users shall determine such costs for the calendar year preceding the date on which the plan is due. Toxics users shall include the cost of each covered toxic and the calculations in the plan.

(2) In determining the cost of the covered toxic, toxics users shall consider indirect and direct labor and material costs, and shall specify in the plan the amount of such costs.

(3) In determining the cost of the covered toxic, toxics users shall consider all costs associated with the use of the toxic, including, but not limited to, the following costs:

(a) purchase or manufacturing cost of the toxic;

(b) storage, accumulation, treatment, disposal, and handling costs associated with toxics and byproducts;

(c) costs associated with activities requires to comply with local, state, or federal laws or regulations, including but not limited to, fees, taxes, treatment, disposal, reporting, and labelling costs;

(d) worker health or safety costs associated with the toxic, including but not limited to, protective equipment, and lost employee time due to accidents or routine exposure to the toxic;

(e) insurance;

(f) potential liability costs that may arise from intentional, unintentional, or accidental activities or occurrences;

(g) loss of community goodwill and product sales lost to competing non-toxic products.

(4) In determining the cost of the covered toxic, toxics users need not quantify potential liability costs and loss of community goodwill and product sales lost to competing non-toxic products. Toxics users shall state in the plan the estimated impact on the cost of the covered toxic of these costs.

(5) In determining the cost of the covered toxic, toxic users shall consider costs other than those set forth in 310 CMR 50.45(3) if others are relevant, and shall describe such costs in the plan.

(6) Toxics users shall state in the plan costs set forth in 310 CMR 50.45(3) that are not relevant in determining the cost of the covered toxic. Toxics users shall explain in the plan why such costs are not relevant.

(7) Toxics users shall explain in the plan how costs associated with the use of the covered toxic were allocated to the production unit. The allocation of such costs to the production unit shall be accurate to the extent possible.

50.46: Technical and Economic Evaluation of Toxics Use ReductionTechniques

(1) Toxics users shall describe the procedure used by the toxics user to identify technologies, procedures, or training programs for potentially achieving toxics use reduction in each production unit. This procedure shall include, but not be limited to, a consideration of each type of toxics use reduction technique specified in the definition of "toxics use reduction" set forth in 310 CMR 50.10 and M.G.L. c. 21I, a list of personnel involved in the procedure, a descripton of information sources consulted, and a description of information gathering techniques.

50.46: continued

(2) The plan shall list technologies, procedures, or training programs identified pursuant to 310 CMR 50.46(1).

(3) Toxics users shall evaluate the technical and economic feasibility of each technology, procedure, or training program listed in the plan pursuant to 310 CMR 50.46(1) and (2) in accordance with the following requirements:

(a) Toxics users shall evaluate whether the technology, procedure, or training program constitutes toxics use reduction as defined in 310 CMR 50.10 and M.G.L. c. 21I, § 2.

(b) Toxics users shall calculate the expected reductions resulting from implementation of the technology, procedure, or training program in accordance with 310 CMR 50.46(3)(b)1. through 4.:

1. toxics users shall calculate expected reductions in the amount of toxics used in each production unit;

2. toxics users shall calculate expected reductions in the amount of toxics used per unit of product for each production unit;

3. toxics users shall calculate expected reductions in the amount of toxics generated by each production unit;

4. toxics users shall calculate expected reductions in the amount of toxics generated as byproduct per unit of product for each produciton unit.

(c) Toxics users shall evaluate the costs and savings associated with the technology, procedure, or training program. Toxics users shall state in the plan the discount rate, cost of capital, depreciation rate, or payback period, if any, used in each analysis. The discount method, depriciation rate, and payback period shall be consistant with the toxics user's current capital budgeting procedures.

(d) Toxics users shall evaluate the relationship between the technology, procedure, or training program and other applicable laws and regulations, including but not limited to, whether implementation of the technology, procedure, or training program will violate any other law or regulation.

(4) Toxics users need not complete the evaluation of a particular technology, procedure, or training program if, during the evaluation, the toxics user determines that the technology, procedure, or training program being evaluated is not appropriate for any of the following reasons:

(a) the technique is clearly technically infeasible;

(b) the technique is clearly economically infeasble;

(c) implementation of the technology, procedure, or training program is not likely to result in a decrease in the amount of toxics used per unit of product or the amount of toxics generated as byproduct per unit of product.

(5) For technologies, procedures, or training programs that the toxics user decides not to implement, the plan shall include:

(a) a description of the technology, procedure, or training program; and,

(b) the reason for deciding not to implement the technology, procedure, or training program.

(6) For technologies, procedures, or training programs that the toxics user decides to implement, the plan shall include:

(a) a description of the technology, procedure, or training to be implemented;

(b) the anticipated costs and savings associated with the technology, procedure, or training program;

(c) the expected reductions in the amount of toxics and the amount of toxics generated as byproduct resulting from implementation of the technology, procedure, or training program calculated pursuant to 310 CMR 50.46(3)(b). The amounts determined pursuant to 310 CMR 50.46(3)(b) and stated in the plan pursuant to 310 CMR 50.46(6)(c) shall be projected for the calendar year after the calendar year in which the plan is due and for the calendar year that is four years after the calendar year in which the plan is due;

(d) an implementation schedule.

50.46: continued

(7) If the evaluation required for a particular technology, procedure, or training program identified pursuant to 310 CMR50.46(1) cannot be complete by the date that the plan is due,the plan shall include the following:

(a) a description of the technology, procedure, or training program;

(b) a description of steps to be taken in order to further evaluate the technique and a schedule for taking these steps;

(c) an explanation as to why the evaluation cannot be complete by the date that the plan is due.

50.47: Plan Summary

(1) Toxics users shall submit to the Department a plan summary on or before July 1 of the applicable year. Such summary shall include:

(a) a copy of the certification statement required pursuant to 310 CMR 50.42(3);

(b) the information required pursuant to 310 CMR 50.43(3) and 310 CMR 50.44(8); and,

(c) for each production unit in which a toxic is manufactured, processed, or otherwise used, a matrix of the form required to be submitted in a toxics use report as set forth in 310 CMR 50.34. In completing the matrix, the toxics user shall mark the intersection of a production operation row and a technique column if the toxic user anticipates that during the next five years implementation of that technique for that operation is expected to account for an increase of five or more points in the byproduct reduction index for one or more covered toxic.

(2) Toxics users may include other information in the summary, including, but not limited to, the information required pursuant to 310 CMR 50.43(2).

(3) The Department may require that the plan summary be submitted on a form prescribed by the Department.

310 CMR 50.48: Plan Updates (reserved)

(1) Toxics users shall complete plan updates every two years beginning with the date on which the initial plan is due pursuant to 310 CMR 50.41(1) by July 1 of the applicable year.

(2) Plan updates shall include an explanation as to why the toxics user failed to implement a technology, procedure, or training program identified pursuant to 310 CMR 50.46(6) or failed to meet the schedule developed pursuant to 310 CMR 50.46(6)(d) or 310 CMR 50.46(7)(b).

50.49: Deficient Toxics Use Reduction Plans

(1) The Department may review plans, plan summaries, or plan updates, and any and all information or documentation supporting the information in the plan, summary, or update.

(2) If the Department determines that a deficiency in a plan, summary, or update was unintentional, then the Department shall allow the toxic user 90 days from the date of written notice of the deficiency to correct the deficiency. Failure to correct the defciency within 90 days from the date of written notice of the deficiency shall be a violation of 310 CMR 50.00 for which the Department may take an enforcement action.

(3) A deficiency in a plan, summary, or update that the Department determines to an intentional deficiency shall be a deficiency for which the Department may take an enforcement action.

(4) The Department may determine that a plan, summary, or update is deficient for any of the following reasons:

(a) the plan, summary, or update, or any supporting documentation, was developed in bad faith;

(b) the plan, summary, or update does not comply with any portion of 310 CMR 50.40;

50.49: continued

(c) information required by or developed pursuant to 310 CMR 50.40 contains a material falsehood;
(d) the plan otherwise fails to satisfy the requirements of M.G.L. c. 21I, 310 CMR 50.40, or any other applicable law or regulation.

50.50: Toxics Use Reduction Planners

310 CMR 50.50 through 50.59, cited collectively as 310 CMR 50.50, set forth the requirements for toxics use reduction planners.

50.51: Required Skills for Certification as a Toxics Use Reduction Planner

(1) In order to become certified as a toxics use reduction planner, an applicant shall demonstrate to the Department that he or she possesses sufficient skills and knowledge to evaluate whether a plan was developed in accordance with 310 CMR 50.40. An applicant shall do so by complying with either 310 CMR 50.54 or 310 CMR 50.55.

(2) In determining whether an applicant possesses sufficient skills and knowlege to evaluate whether a plan was developed in accordance with 310 CMR 50.40, the Department may consider, without limitation, whether the applicant has sufficient skills or knowledge to evaluate whether the following analyses were conducted in accordance with 310 CMR 50.40:
(a) analysis of toxic chemical use, byproduct generation, and emissions in a process or method of producing a product or service, including but not limited to analysis of whether a process flow diagram developed pursuant to 310 CMR 50.44(1) reflects actual facility operations;
(b) analysis of the technical feasibility and potential impacts of a change to an existing process or method of producing a product or service;
(c) analysis of the economic feasibility and potential impacts of a change to an existing process or method of producing a product or service;
(d) analysis of the potential effects on the facility's operation, function, and business activities due to a change to an existing process or method of producing a product or service;
(e) analysis of the potential effects on worker health and safety at the facility due to a change to an existing process or method of producing a product or service;
(f) analysis of the potential effects on toxic chemical use, byproduct generation and emissions to all environmental media due to a change to an existing process or method of producing a product or service;
(g) analysis of the potential effects of a change to an existing process or method of producing a product or service on compliance with other applicable laws and regulations; and,
(h) evaluation of whether a potential change to an existing process or method of producing a product or service constitutes toxics use reduction.

50.52: Work Experience Requirements for All Toxics Use Reduction Planners

(1) Except as provided in 310 CMR 50.52(2),(3) and (4), an applicant shall have seven years of full-time work experience in any or all of the following areas:
(a) engineering or process control;
(b) manufacturing, production, or quality control;
(c) environmental compliance or worker health and safety;
(d) planning, industrial design, or research and development;
(e) accounting, business administration, or product marketing; or
(f) managerial or legal.

(2) Part-time work experience in the areas set forth in 310 CMR 50.52(1) may count, on pro-rated basis, toward the requirements set forth in 310 CMR 50.52(1).

50.52: continued

(3) Education may substitute for up to five years of the work experience required in 310 CMR 50.52(1) as follows, provided that the degree or certificate is from an accredited educational institution:

(a) certificate from a technical or vocational school may substitute for up to one (year of work experience;

(b) a degree, concentration program, or major directly related to the work experience categories set forth in 310 CMR 50.52(1)(a) through (c), including, without limitation, a degree, concentration program, or major in biology, chemistry, or physics may substitute for experience as follows:

1. an associate's degree may substitute for up to two years of work experience;
2. a bachelor's degree may substitute for up to four years of work experience;
3. a master's or doctorate degree may substitute for up to five years of work experience;

(c) a degree, concentration program, or major directly related to the work experience categories set forth in 310 CMR 50.52(1)(d) through (f), may substitute for experience as follows:

1. a bachelor's degree may substitute for up to three years of work experience;
2. a master's or doctorate degree may substitute for up to four years of work experience;

(d) a bachelor's, master's, or doctorate in a degree, concentration program, or major not directly related to the work experience categories set forth in 310 CMR 50.52(1)(a) through (f) may, at the Department's discretion, substitute for up to two years of work experience.

(4) The Department may, at its discretion, allow work experience in areas other than those set forth in 310 CMR 50.52(1) to count toward work experience required by 310 CMR 50.52(1) if the applicant demonstrates to the Department that such work experience is related to the skills or knowledge required pursuant to 310 CMR 50.51(2).

(5) Work experience, acquired by an applicant while he or she is enrolled as a full-time student in an accredited educational institution, for which the applicant receives educational course credit shall not contribute to the work experience required by 310 CMR 50.52(1).

50.53: General Application Requirements and Procedures

(1) The Department may require applicants to apply for certification on a form specified by the Department.

(2) The Department may certify an applicant as a toxics use reduction planner for no more than two years. Toxics use reduction planners seeking recertification shall apply for recertification in accordance with 310 CMR 50.58. Failure to meet recertification requirements shall constitute grounds for denial of an application.

(3) Upon submission of an application, each applicant shall pay to the Department an application fee determined as follows:

(a) The fee for an applicant that applies for certification pursuant to 310 CMR 50.54 and intends to certify plans for toxics users other than his or her employer shall be $500.

(b) Applicants employed by any authority, district, municipality, or political subdivision of the Commonwealth of Massachusetts whose job duties are related to toxics use reduction shall be exempt from paying the fee.

(c) The fee for applicants other than those set forth in 310 CMR 50.53(2)(a) or (b) shall be $100.

(4) The schedule for timely action on an application shall be as set forth in 310 CMR 50.53(4). The schedule shall be applied in accordance with 310 CMR 4.00. As used in 310 CMR 50.00, the terms "administrative completeness review" and "technical review" shall be defined and applied as set forth in 310 CMR 4.00.

50.53: continued

(a) Within 30 days of receipt of an application and payment of the application fee, the Department shall complete an administrative completeness review.
(b) Within 180 days of making a determination of administrative completeness, the Department shall complete a technical review.

(5) Following the technical review, the Department shall issue a written decision granting or denying certification. A decision denying certification shall state the grounds for denial. An applicant whose certification is denied may request an adjudicatory hearing in accordance with M.G.L. c. 30A and 310 CMR 1.00, 310 CMR 4.00, and 310 CMR 50.60.

50.54: Exam-Track Application Procedure

(1) An applicant may become certified as a toxics use reduction planner if he or she meets the following requirements:
(a) no more than two years before applying for certification, he or she completes, to the satisfaction of the educational institution presenting the program, a toxics use reduction planning program; and,
(b) no more than two years before applying for certification, he or she obtains a passing score on the uniform certification examination.

(2) An applicant certified pursuant to 310 CMR 50.54, who paid the application fee required by 310 CMR 50.52(3)(c), may certify toxics use reduction plans in accordance with 310 CMR 50.00 for facilities owned or operated by his or her employer. The word "employer", as it is used in 310 CMR 50.54(2), shall be defined in accordance with 310 CMR 50.55(6).

(3) An applicant who becomes certified pursuant to 310 CMR 50.54, who paid the application fee required by 310 CMR 50.53(1)(a), may certify toxics use reduction plans in accordance with 310 CMR 50.00 for any toxics user or other person.

(4) An applicant certified pursuant to 310 CMR 50.54, who paid the application fee required by 310 CMR 50.52(3)(c), may, upon payment of $400 to the Department, certify toxics use reduction plans in accordance with 310 CMR 50.54(3).

50.55: Certification through Experience in Toxics Use Reduction Activities

(1) The Department may certify an applicant as a toxics use reduction planner if he or she has at least two years of full-time work experience in toxics use reduction activities. Part-time work experience in toxics use reduction activities may be pro-rated in accordance with 310 CMR 50.52(2) and (4).

(2) As used in 310 CMR 50.00, "toxics use reduction activities" include, but are not limited to, activities in which the individual uses the skills or knowledge necessary to conduct the analyses set forth in 310 CMR 50.51(2) or activities in which the individual uses the skills or knowledge necessary to evaluate whether the analyses set forth in 310 CMR 50.51(2) were conducted in accordance with 310 CMR 50.40. Successful completion of the toxics use reduction planner certification course shall also constitute a toxics use reduction activity, and shall count for six months of the two years of work experience required pursuant to 310 CMR 55(1).

(3) In order to become certified under 310 CMR 50.55, an applicant shall demonstrate to the Department that he or she understands how the skills or knowledge referred to in 310 CMR 50.51(2) relate to toxics use reduction plans.

(4) In determining whether an applicant satisfies 310 CMR 50.55(1) and (3), the Department may consider, without limitation, whether, through work experience, the applicant used or gained skills or knowledge that enable the applicant to conduct or evaluate the analyses set forth in 50.51(2).

50.55: continued

(5) A planner certified pursuant to 310 CMR 50.55 may certify plans for any facility owned or operated by his or her employer, provided that he or she demonstrates to the Department that at least one year of his or her experience in toxics use reduction activities is related to the operations of the facility. In determining whether the planner's experience in toxics use reduction activities is related to the operations of the facility at which the planner seeks to certify a plan, the Department may consider, without limitation, the similarity of the production units, products, or processes at facilities where the planner received his or her experience in toxics use reduction activities to those at the facility at which the planner seeks to certify a plan.

(6) As it is used in 310 CMR 50.50, "employer" means an individual or organization for whom the planner works and receives wages on a regular basis. For purposes of 310 CMR 50.50, a planner may not have more than one employer within the same time period. If a planner is an independent contractor and performs work for an individual or organization under a contract, for purposes of 310 CMR 50.50, the individual or organization is not the planner's employer.

50.56: Certification of Plans

(1) A toxics use reduction planner shall certify a plan only if, in his or her independent professional judgment, the plan satisfies the requirements of 310 CMR 50.40 and demonstrates a good faith and reasonable effort to identify and evaluate toxics use reduction options.

(2) In certifying a plan, a toxics use reduction planner shall make a good faith and reasonable effort to identify and obtain relevant data or other information needed to comply with 310 CMR 50.56(1).

(3) In certifying a plan, a toxics use reduction planner shall maintain records of the procedures used to review the plan. The planner shall maintain such records for at least five years from the date that the planner certifies the plan.

50.57: Disclosure Requirements

A toxics use reduction planner shall disclose the following to his or her client or employer:

(1) any financial interest he or she has in any technique or equipment evaluated in the toxics use reduction plan; and,

(2) any business association, affiliation, or other relationship he or she has with a direct competitor of the client or employer.

50.58: Recertification Renewal

(1) A toxics use reduction planner may apply to the Department for recertification in accordance with 310 CMR 50.58. A toxics use reduction planner seeking recertification shall apply prior to the date on which his or her certification expires. Failure to do so shall result in the expiration of his or her certification, unless the Department extends the planner's certification pursuant to 310 CMR 50.58(4)(d). Timely submittal of an application for recertification shall extend the planner's certification until the Department issues a final decision denying recertification, or a final decision suspending or revoking the planner's certification pursuant to 310 CMR 50.50.

(2) In order to be recertified, a toxics use reduction planner shall, during the time period of his or her certification, complete at least 30 credits of courses, seminars, or any other educational or professional programs, approved by the Department, in any of the following areas:

50.58: continued

(a) toxics use reduction activities as defined in 310 CMR 50.55(2); or,
(b) other environmental laws or regulations, or laws or regulations pertaining to worker health or safety, except that such education may not count for more than four credits.

(3) Professional activities related to toxics use reduction, including but not limited to presenting or publishing papers, teaching, participation in professional or trade associations, or participation in advisory committees for government agencies, may, at the Department's discretion, count toward up to four credits of the coursework required in 310 CMR 50.58 (2).

(4) The Department shall determine whether to recertify a planner in accordance with 310 CMR 50.58 and the following:
(a) Courses, seminars, or any other educational or professional programs relating to toxics use reduction activities sponsored by the Department, the Office of Technical Assistance, the Toxics Use Reduction Institute, other state or federal pollution prevention agencies, or the Environmental Protection Agency shall be considered "approved by the Department" for the purposes of 310 CMR 50.58(2).
(b) Individuals, sponsors or presenters of courses, seminars, or programs, or planners who wish to count courses, seminars, or any other educational or professional programs other than those set forth in 310 CMR 50.58(4) toward the recertification requirements of 310 CMR 50.58 may apply to the Department for approval of such courses, seminars, or other educational or professional programs. The Department may approve such courses, seminars, or other educational or professional programs at its discretion.
(c) In general, one hour of coursework in topics specified in 310 CMR 50.58(2) shall equal one credit. In unusual cases, the Department may, at its discretion, specify that one hour of coursework in topics specified in 310 CMR 50.58(2) equals more than one credit, not to exceed two credits, if the Department determines that a particular course, seminar or other program, or a particular topic, is especially relevant or important to the responsibilities of toxics use reduction planners.
(d) If the Department disapproves a course, seminar, or other educational or professional program, the Department may, at its discretion, extend a planner's certification so that the planner may attend other courses, seminars or programs.
(e) Topics in pollution treatment or control shall not count toward the coursework required pursuant to 310 CMR 50.58(2)(a).
(f) The Department may deny recertification for any of the reasons set forth in 310 CMR 50.59(1).

(5) Following review of an application for recertification, the Department shall issue a written decision granting or denying recertification. A decision denying certification shall state the grounds for such denial. An planner whose application for recertification is denied may request an adjudicatory hearing in accordance with M.G.L. c. 30A and 310 CMR 1.00, and 310 CMR 50.60.

(6) If the Department decides to deny recertification, the Department may, at its discretion, specify conditions that the applicant shall fulfill in order to be certified or recertified. Such conditions may include, without limitation, the following:
(a) satisfactory completion of coursework pursuant to 310 CMR 50.58(2);
(b) satisfactory completion of remedial education in accordance with 310 CMR 50.59(4);
(c) a deadline for satisfying any conditions imposed by the Department pursuant to 310 CMR 50.58(6);
(d) a time period, not to exceed three years, during which the individual may not apply to the Department for certification as a toxics use reduction planner.

(7) A planner may apply to the Department for modification of the requirements set forth in 310 CMR 50.58. The Department may, at its discretion, modify the requirements of 310 CMR 50.58 for a planner. In determining whether to do so, the Department may consider, without limitation, whether satisfying the requirements set forth in 310 CMR 50.58 constitute undue hardship for the planner, or whether the nature of toxics use at the facility warrants modification of the requirements set forth in 310 CMR 50.58.

50.58: continued

(8) The Department may establish a fee for recertification.

(9) The Department may establish a deadline for recertification.

(10) The Department may require applicants for recertification to apply on a form specified by the Department.

(11) The Department may suspend or revoke a toxics use reduction planner's certification for failure to meet the recertification requirements set forth in 310 CMR 50.58. The Department may preclude such individuals from reapplying for certification for up to three years. In determining whether to suspend or revoke a toxics use reduction planner's certification for failure to meet the recertification requirements set forth in 310 CMR 50.58, the Department may consider whether the failure was due to serious illness or other circumstances beyond the planner's control.

50.59: Procedure Governing Disciplinary Proceedings

(1) The Department may suspend, deny, or revoke a planner's certification, or deny recertification for any good cause, including, but not limited to:

(a) gross negligence in complying with 310 CMR 50.50;
(b) fraud or misrepresentation in complying with 310 CMR 50.50;
(c) unethical conduct in complying with 310 CMR 50.50;
(d) failure to meet the recertification requirements set forth in 310 CMR 50.58;
(e) noncompliance with any provision of M.G.L. c.21I or 310 CMR 50.00.

(2) As part of an action taken by the Department pursuant to 310 CMR 50.59(1) to suspend or revoke certification, or to deny recertification, the Department may specify a time period, not to exceed three years, during which the planner may not apply to the Department for certification as a toxics use reduction planner.

(3) A planner may appeal a decision by the Department to suspend or revoke that planner's certification in accordance with M.G.L. c. 30A and 310 CMR 1.00, 310 CMR 4.00, and 310 CMR 50.60.

(4) Nothing in 310 CMR 50.59(1) shall constitute or be construed as limiting the Department's authority to take enforcement actions pursuant to other applicable laws and regulations.

(5) The Department may request that the toxics use reduction planner who is potentially the subject of an enforcement action pursuant to 310 CMR 50.59(1) or (2) to attend an informal conference.

(6) Whenever the Department determines that a planner has violated any provision of 310 CMR 50.50, the Department may require that the toxics use reduction planner attend and successfully complete a course of remedial education proscribed by the Department. Failure to successfully complete such a course of remedial education may be grounds for the Department to suspend or revoke certification, or to deny recertification.

50.60: Appeal Rights and Procedures

(1) Within 21 days of the date of issuance of the Department's decision pursuant to 310 CMR 50.53(5), 310 CMR 50.55(5), 310 CMR 50.58(5), or 310 CMR 50.59(1), an appellant may request, in writing, an adjudicatory hearing in accordance with M.G.L. c. 30A, 310 CMR 1.00, and 310 CMR 4.00. In an adjudicatory hearing, the appellant bears the burden of persuading the Department that its decision was in error. Each request for an adjudicatory hearing filed pursuant to 310 CMR 50.60 shall state all reasons why the appellant believes that the Department's decision is erroneous. If the Department does not receive the appellant's request within 21 days of the date of issuance of the Department's decision, the appellant shall be deemed to have waived his or her rights to an adjudicatory appeal.

50.60: continued

(2) If the Department denies an application for certification, the grounds upon which the appellant may claim that the Department's decision was in error shall be based on the information submitted to the Department by the applicant during the application process, and shall be limited to the following:

(a) The applicant possesses the skills and knowledge required by 310 CMR 50.51.

(b) The applicant possesses work experience required by 310 CMR 50.52.

(c) The applicant satisfactorily completed the toxics use reduction planning program as required by 310 CMR 50.54.

(d) The applicant possesses at least two years of work experience in toxics use reduction activities in accordance with 310 CMR 50.55.

(e) The applicant's experience in toxics use reduction activities is related to the operations of the facility at which he or she seeks to certify a plan.

(3) If an applicant is denied certification because he or she fails to obtain a passing score on the uniform certification examination, the procedures set forth in 310 CMR 50.61 shall apply.

50.61: Procedures for Reviewing the Uniform Certification Examination

(1) If an applicant is denied certification because he or she fails to obtain a passing score on the uniform certification examination, the applicant may, within 21 days of the date of issuance of a notice containing the applicant's exam score, submit to the Department a written request to review his or her exam. If the Department does not receive the appellant's request within 21 days of the date of issuance of the Department's notice containing the applicant's exam score, the appellant shall be deemed to have waived his or her rights pursuant to 310 CMR 50.61.

(2) If, after reviewing his or her exam, the applicant believes that it was scored incorrectly, he or she may, within 42 days of the date of issuance of a notice containing the applicant's exam score, submit to the Department a written request for an informal conference with the Department for purposes of reviewing the scoring. If the Department does not receive the appellant's request within 21 days of the date of issuance of the Department's notice containing the applicant's exam score, the appellant shall be deemed to have waived his or her rights pursuant to 310 CMR 50.61. The request shall state all reasons why the applicant believes that the scoring was incorrect. Such reasons shall be limited to the following:

(a) the score is incorrect due to a mistake in arithmetic.

(b) the score is incorrect because an answer deemed incorrect is, in fact, correct.

(c) the score is incorrect because question(s) deemed to have been answered incorrectly do not test whether the applicant possesses the skills required by 310 CMR 50.51.

(3) If a request pursuant to 310 CMR 50.61 is based on 310 CMR 50.61(2)(c), the request shall identify the specific questions being challenged and state reasons why the applicant believes that each question does not test whether the applicant possesses the skills required by 310 CMR 50.51.

(4) If the Department believes that the applicant's examination was scored incorrectly, the Department shall either recalculate the applicant's score, or require the applicant to answer a substitute question, as the Department deems appropriate.

(5) A request pursuant to 310 CMR 50.61 shall not constitute a request for an adjudicatory hearing pursuant to 310 CMR 50.60, and the Department's determination pursuant to 310 CMR 50.61 shall not be appealable pursuant to M.G.L. c. 30A or 310 CMR 50.60.

50.70: User Segments

310 CMR 50.70 through 50.72, cited collectively as 310 CMR 50.70, set forth the criteria for classifying production units into user segments and designate user segments.

50.71: Criteria for Establishing User Segments

(1) Production units grouped into a user segment must contain similar products and processes.

50.71: continued

(2) For purposes of grouping similar products and processes into user segments, the department may consider, without limitation, the following criteria:

(a) transferability or potential applicability of toxics use reduction techniques;
(b) chemical use, byproduct, or emission;
(c) potential health or environmental impact;
(d) potential for improvement in environmental performance; or
(e) type of equipment used.

(3) User segments may be designated according to process codes set by the department and their associated products, or by other groupings of processes (*e.g.*, Clean Water Act categories, processes subject to MACT standards under the Clean Air Act) and their associated products. For purposes of 310 CMR 50.70, the department may, consistent with the definition of "product" in 310 CMR 50.10, designate the result of the process as the "product."

50.72: List of User Segments

User Segment Name	Process Code* or Process Description	Product
(1) power generation	JJ-01	Electricity or Steam
(2) electroplating (barrell and rack)	AA12, AA13	plated part
(3) deionization, demineralization	HH-01	treated water
(4) forging	CC-03	forged metal part
(5) smelting	DD-07	smelted metal
(6) welding	CC-09	welded metal part
(7) heat treating of metal	CC-04	metal part
(8) refrigeration material	II-01	chilled fluid
(9) pH adjustment solution	EE-08, HH-03	treated water
(10) jet printing	AA-11	printed material
(11) screen printing	AA-08	printed material
(12) pad printing	AA-09	printed material
(13) printing (letterpress, (flexographic, lithographic)	AA-05, AA-06, AA-07	printed material
(14) equipment cleaning	FF-01, FF-02, FF-03	clean equipment
(15) parts cleaning	BB-01, BB-02, BB-03	clean part
(16) casting/molding plastic	CC-01	plastic part
(17) casting molding	CC-01	metal part
(18) adhesives or sealant blending, mixing, compounding	GG-01	adhesive or sealant products produced by toxics users classified by sic code 2891

*DEP'S instructions for completing toxics use reports contains a list of process codes.

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

REGULATORY AUTHORITY

310 CMR 50.00: M.G.L. c. 21I, §§ 3, 10, 11 and 12.